

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION - LOS ANGELES

UNITED STATES OF AMERICA,)	CASE NO: 2:18-CR-00759-CJC-4
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Los Angeles, California
)	
AARON EASON,)	Friday, November 2, 2018
)	(10:06 a.m. to 10:54 a.m.)
<u>Defendant.</u>)	

DETENTION HEARING

BEFORE THE HONORABLE ROZELLA A. OLIVER,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Los Angeles, California; Friday, November 2, 2018; 10:06 a.m.

(Call to Order)

THE COURT: Calling Case MJ-18-2791, United States of America versus Aaron Eason.

Counsel, your appearances, please?

MR. FITZGERALD: Good morning, Your Honor. Patrick Fitzgerald on behalf of the United States.

THE COURT: Good morning, Mr. Fitzgerald.

MR. McNICHOLAS: Good morning, Your Honor. John McNicholas appearing on behalf of Aaron Eason, who's present in custody.

Also, Your Honor, with me at counsel table is Florida attorney Augustus Invictus, who is planning on being involved in this case. And we're asking if he can remain at counsel. He is Mr. Eason's private attorney.

THE COURT: Okay. Let me ask -- thank you very much -- is it Mr. Invictus?

MR. INVICTUS: Yes, ma'am.

THE COURT: All right. Have you -- are admitted into the central district?

MR. INVICTUS: No, ma'am, I've not --

THE COURT: Okay, all right.

MR. INVICTUS: -- (indisc.) yet.

THE COURT: Okay. I think then for purposes of today, I don't think you can participate. I didn't hear

1 Mr. McNicholas saying that he would be participating, but
2 instead --

3 **MR. McNICHOLAS:** He's -- he will be -- I just want
4 him to stay at counsel table. He's a witness.

5 And we -- actually, we have a proffer regarding
6 something that happened with Mr. Invictus and the Defendant.
7 And the Government's aware of it. And so he may actually
8 testify.

9 **THE COURT:** Okay. Well, why don't we take it one
10 step at a time. And please be seated.

11 And then Mr. Eason, I see that you're here; good
12 morning, sir.

13 **DEFENDANT EASON:** Good morning.

14 **THE COURT:** Okay. We are here, as you know, on a
15 continued detention hearing. I have had an opportunity to
16 review the updated Pretrial Services report.

17 And I've also received the Defendant's memorandum in
18 support of his release pending trial. Mr. Fitzgerald, have you
19 had an opportunity to review the memorandum?

20 **MR. FITZGERALD:** I have, Your Honor, yes.

21 **THE COURT:** Okay, all right; thank you.

22 So why don't we just begin. First, I'll take the
23 Government's proffer again. And then I'll hear from
24 Mr. McNicholas.

25 **MR. FITZGERALD:** Your Honor, the Government proffers

1 the complaint in this matter, the contents of the Pretrial
2 Services report.

3 And it also proffers that yesterday afternoon, a two-
4 count indictment against the Defendant and other members of the
5 RAM organization was returned by the grand jury, one count at
6 18 USC; Section 371, conspiracy, and then 18 USC; 2101, riot --
7 an aiding and abetting, rioting.

8 **THE COURT:** Okay. All right. Thank you very much.

9 Mr. McNicholas, so I will hear you first. Why don't
10 you go ahead and state what you're prepared to offer in support
11 of bond in this case? And then I'll hear argument as well.

12 **MR. McNICHOLAS:** Your Honor, for general information
13 -- and we offer the complaint and the Pretrial Services report,
14 and that Mr. Eason had never been arrested in his life prior to
15 October 28, 2018. He's 38 years old.

16 Number two, Mr. Eason has lived in the central
17 district of California for about 98 percent of his life. He
18 also lived in Portland. I believe he lived in Arizona for just
19 a few months at one point in like 2000.

20 Mr. Eason has never been to Europe. There were some
21 comments about the organization having ties to Europe and
22 actually going there for some kind of training.

23 Mr. Eason has never been to Europe. Mr. Eason has
24 been outside of the United States two times his entire life,
25 once at age 10. And another time a few years later, they were

1 both (phonetic) to Mexico with his family.

2 His entire family, except for one brother who lives
3 in Arizona, is here. His father, his mother, his sister, and
4 his brother, and his daughter are all in the back row. And I
5 would proffer the testimony from his father, Walter Eason,
6 regarding some of the issues that have been alleged in the
7 amended Pretrial Services report.

8 So we have a situation where the individual's never
9 been arrested before, and suddenly, he's charged with a crime
10 of inciting or remaining in a riot, which carries a maximum of
11 five years' imprisonment, how -- when I read the statute.

12 I believe, just based on the statute itself, that the
13 time and imprisonment is not enough for a reasonable person to
14 want to commit flight, because you can also get probation off
15 of this offense if you are convicted, assuming that you are in
16 fact guilty.

17 Regarding the flight issue, apparently, the news on
18 the mainstream media came out midweek last week that there was
19 a warrant for Mr. Eason's arrest. Mr. Eason found out from his
20 father that there was a warrant for his arrest, that the FBI
21 was looking for him.

22 Mr. Eason didn't know what to do. He's never --
23 remember, he's never had issues with the law in his life. So
24 the logical thing to do is of course try to find a lawyer.

25 So Mr. Eason calls around trying to find a lawyer in

1 the area where they live up in Anza. It's far away from a lot;
2 I mean there's not a lot out there where he lives.

3 East of him, no -- it's not like they're right next
4 to San Bernardino or even Riverside. It's a long ways to go
5 from there.

6 Eventually, a friend referred Augustus Invictus, who
7 is an attorney from the state of Florida, licensed in four
8 states. And this is up his alley, these issues; he's dealt
9 with these issues before.

10 So Mr. Eason contacted Augustus Invictus. I'm
11 proffering the testimony of Mr. Invictus. He's prepared to
12 testify.

13 I don't know if the Government wants to accept the
14 testimony or not. But the bottom line is this; the information
15 I had is that Mr. Invictus spoke to Mr. Eason on either Friday
16 or Saturday, the 26th or 27th of October.

17 He -- they agreed that Mr. Invictus would be his
18 counsel on this matter, and that Mr. Eason wanted to know what
19 should he do. The advice of counsel, based upon his fear of
20 Government retaliation or danger regarding the FBI was, wait
21 for me, we'll turn you in together, we will drive to the FBI
22 together, I will drop you off at the office.

23 Mr. Invictus was flying from Florida. He did not
24 arrive until Sunday the 28th. As soon as Mr. Invictus arrived,
25 he escorted Mr. Eason to the FBI office on Wilshire Boulevard.

1 They met with the FBI agents. He turned himself in;
2 and he remained in custody ever since. So that's the extent of
3 what you could call some sort of flight issue.

4 I believe he did what most ordinary human beings do
5 when they're charged with a criminal complaint, is they find a
6 lawyer, they try to do it the best they can, so they're not
7 arrested and they're not subject to the byproducts of an
8 arrest, especially where they live out in that property.

9 Now, in the amended Pretrial Services report, there
10 is additional information regarding Walter Eason. Walter Eason
11 has no criminal record either. He's lived in the central
12 district his entire life.

13 And when the FBI came to his property, Walter Eason
14 was just simply putting the FBI on alert; he said, you know,
15 400 feet from our property, there is a Marijuana growing farm;
16 and I just want -- just be careful out there, because these
17 guys, you don't know if they're going to shoot you, if you
18 happen to stumble upon their property.

19 Well, in the amended report, the commentary that I'm
20 reading, are like, oh, Mr. Eason's actually the bad guy, and he
21 might shoot somebody or some of his family member might shoot
22 somebody.

23 That's not the case. We're dealing with a very
24 reasonable ordinary group of people that are all together.
25 They all work. They all have jobs. Everybody's gainfully

1 employed.

2 So that wasn't the point. Yes, there are a few
3 firearms on the property. But if the Court were to release
4 Mr. Eason, the firearms would be removed from the property.

5 And that would obviously be a condition that he
6 couldn't go to the property unless the firearms are removed.
7 There are a few firearms on the property.

8 Now, this Rise Above movement, Aaron Eason is not a
9 member, period. He never was a member. The three codefendants
10 in this case, maybe they're members and maybe they're not
11 members.

12 But the bottom line is, Aaron Eason's had very little
13 contact with any of those people. He doesn't know them on a
14 personal level. They are not his friends.

15 They associated for the purpose of going to this
16 Berkley rally, because Mr. Eason ended up putting a van on
17 somebody else's credit card and signed the contract for the van
18 for the basic premise that he was the only individual in the
19 van that was actually old enough to rent the van.

20 So he was designated to do it. He used somebody
21 else's credit card. So he rented the van, so then went up to
22 this rally.

23 Now, I believe, Your Honor, based on the facts that
24 I'm reading, and going to the facts, which are the least
25 important part of the release issue, but still significant, is

1 that conservative rallies, Donald Trump rallies, right-wing
2 rallies, rallies based on the First Amendment speech,
3 regardless of the content, are still protected, still
4 protected.

5 Yet this group of people, anarchists, Antifa,
6 communists, whatever you want to call them, have been
7 inflicting violence upon Donald Trump supporters, upon
8 conservatives, upon right-wingers, upon white supremacists,
9 whatever, they've been doing it, and they've been showing up at
10 events where these people have been peacefully speaking and
11 peacefully marching, throwing anything from eggs in the face,
12 to locks over the head, to mace in the eyes, over, and over,
13 and over again.

14 So these people see this stuff on the news, and
15 they're going, why doesn't the police protect speech? They're
16 not protecting speech.

17 Why can't we do something? Can something be done?
18 Well, why can't we just go there, at least to stand by? Why
19 can't we go there to stand by?

20 And as -- when they stand by, the confrontation
21 begins. The -- I mean there's thousands of videos on the
22 internet, Your Honor, regarding what's going on.

23 Berkley, almost the entire Berkley April 15th, 2017
24 rally is captured on video. And virtually all that I've seen
25 is Antifa going to the conservative, or right-winger, Trump

1 supporters, whatever they are, and right in their face,
2 aggressively instigating confrontation.

3 I attached several exhibits, Your Honor, because I
4 think those exhibits are important. In addition to the two
5 letters that I have, Your Honor -- and I'll just mention those
6 briefly, because those go more towards the integrity of
7 Mr. Eason -- the first letter is from a veterinarian in the
8 area, Mrs. Anderson, who actually employed Mr. Eason to do
9 landscaping work on -- for the community of Anza, where they
10 actually went, and put up decorative signs throughout the
11 community.

12 And he has actually assisted her before. And when
13 there was a fire in -- on her property, he was the first one to
14 go there and protect the property. So she wanted to make that
15 clear.

16 And any thought that Mr. Eason is a white supremacist
17 is completely beyond her belief, because she actually sees him
18 on a daily basis. And that is not her opinion of Mr. Eason at
19 all; okay? So this is somebody that actually knows her.

20 Also, I included a letter from Mr. Eason's brother-
21 in-law. And he has also stated that Mr. Eason did work for
22 him, and -- when they were doing landscaping.

23 Also, Your Honor, I'm proffering that Mr. Eason also
24 had a job as a bartender at a winery. And he worked at a feed
25 store in the area as well. So he's kept himself busy.

1 His dad, Walter Eason, they have a deal; take care of
2 this property, cook our meals for us, keep the place clean, and
3 you can stay here, you and your daughter can stay here. And
4 Mr. Eason's 13-year-old daughter is also here in the courtroom.

5 The two of them live together. The mother is not the
6 caregiver for that child; Mr. Eason is. The -- Mr. Eason is
7 the provider and the caregiver. And Mr. Eason, his father
8 Walter, and his brother Tim, and his daughter, they all live in
9 that house together.

10 There's another residence on the property; it's
11 actually a converted barn. That's where Mr. Eason's mother
12 lives, because the parents are divorced. And his sister and
13 his sister's family live in that converted barn.

14 So those people are all on this property. It is not
15 an active ranch; it's just a property; it's a -- it's land, and
16 it's where they live. It's been in the Eason family for a few
17 generations. Mr. Eason owns the property outright.

18 So anyway, those are Exhibit 1 and 2. Exhibit 3,
19 going down the list, has to do -- I put that out there, because
20 I think it's really important that that shows significantly
21 that the three codefendants, they're all in-action photos;
22 okay?

23 They're actually -- those photos were taken at events
24 at rallies, days where there was actually confrontation. Aaron
25 Eason, they don't have anything; there's no pictures of him

1 punching people or getting in fights with anybody. They took a
2 DMV photo.

3 So here, we have Rondelle (phonetic) Bowman and Laub
4 (phonetic); and they're action photos. And you got a picture
5 of Aaron Eason smiling for the camera when he's getting his
6 driver's license.

7 I think that's important, Your Honor, because Aaron
8 Eason was never in the picture in this case until he
9 communicated with the individuals about going to Berkley, and
10 they're taking a van, they're going to do some training.

11 And then they go to Berkley. And you never hear
12 about Mr. Eason again. Despite the history of this RAM
13 movement, despite the allegations of white supremacy, Aaron
14 Eason is in this picture for a short period of time.

15 Exhibit 4 through 7 illustrates who the true
16 aggressors are. And it is the Antifa, communist, anarchist
17 movement that is stifling speech in places like Berkley, in
18 places like Portland, in places like Washington DC.

19 It is a very difficult position for some reason. I
20 don't know why law enforcement stands down. But the Berkley
21 Police definitely stood down on April 15th.

22 They waited for all these events to happen. They
23 actually -- in Exhibit 4, this is actually a photograph of an
24 individual hitting a -- basically a helpless victim over the
25 head with a bike lock.

1 The individual who hit him over the head with a bike
2 lock was prosecuted by local authorities. He ended up with a
3 misdemeanor. But he did some pretty serious damage.

4 It's all on video for the world to see. But it was a
5 pretty violent act. The guy was sitting here engaged with the
6 women standing in front wearing a mask; those are Antifa
7 members.

8 And suddenly, somebody behind the man with the hoodie
9 pops out with a lock in his hand and hits him over the head
10 gushing blood. He had to be -- he had to go to the hospital
11 and get -- and be treated.

12 Okay, so that was significant. That is when police
13 actually stepped in at that Berkley rally.

14 The next picture just illustrates the type of person
15 who is there, the antagonizers, the communists, the anarchists,
16 who actually go to these rallies. This is a woman who makes
17 very clear what her positions are, that she was headed to
18 Berkley to disrupt the neo-white supremacist jerk circle today,
19 nervous but determined to bring back 100 Nazi scalps.

20 And then she gets there. She's got a wine bottle in
21 her hand during the video, during when there was actually
22 rioting going on. That's what she's got for her weapon as
23 she's jumping into the crowd, to do damage.

24 I know this woman is fairly notorious for her
25 actions. And she's on Twitter, and on Facebook, and everywhere

1 else, just advertising what she does.

2 We also wanted to show Exhibit 6, because Exhibit 6
3 is the Berkley April 15th. And there were actually -- many of
4 these people were wearing Trump, support Trump, Donald Trump t-
5 shirts.

6 And they're in the street in downtown Berkley. And
7 cars are trying to drive through. Well, the Antifa guys, all
8 the guys here with the hoodies, and the masks, and everything,
9 standing on the right, are blocking traffic; they're not
10 letting people go through.

11 So the ones on the left were there basically trying
12 to get the cars escorted through, so that they could get
13 peacefully to their destination. Confrontation obviously
14 resulted.

15 But there is a video, Your Honor, that I watched,
16 that shows these -- Trump's -- people with Trump t-shirts on,
17 people that are part of Mr. Eason's group that were actually
18 trying to help these cars move through.

19 Then also, Your Honor, I attached another photograph
20 with the individual being struck by a skateboard. He's wearing
21 a Trump t-shirt.

22 The individual hitting him is an Antifa member
23 wearing a mask. And then the final Exhibit 7 was just an
24 illustration of what these people were up against.

25 You see a guy just basically sitting down, being

1 confronted by a mob of Antifa members, most of them masked, but
2 the woman in front who is yelling, get the fuck out of here,
3 you racist piece of shit, she's not wearing a mask; she's
4 wearing sunglasses and a hat, and she looks like she might be a
5 leader of the group.

6 Within seconds, there's an individual standing behind
7 the woman. He's wearing a motorcycle helmet and a mask. His
8 face is covered.

9 Within seconds, that individual goes to a helpless
10 World War II veteran sitting in a wheelchair, takes the
11 veteran's water bottle from his hands and sprays it all over
12 his body. And that's depicted in Exhibit 7. I showed the
13 screen shot of that.

14 That's the reality of what happened in Berkley. It
15 has nothing to do with viewpoint. It has nothing to do with
16 white supremacy. It has nothing to do with going after certain
17 groups because they have things to say about other groups.

18 Mr. Eason is not a flight risk. Conditions are
19 definitely -- conditions can be fashioned to make sure that he
20 appears at every court appearance.

21 And conditions can be fashioned to ensure that if in
22 fact anybody considers him a danger to the community, that he
23 will not be a danger to the community. Number one, he doesn't
24 know those codefendants; he wants to be severed from them.

25 A condition that he have no contact with

1 codefendants, or any members of RAM, or any members of any
2 white supremacy group, or any other hate group, or whatever
3 people think, is an appropriate condition, because Mr. Eason's
4 moved on, he's not part of that. So that's an appropriate
5 condition.

6 Curfew is an appropriate condition. I mean house
7 arrest would be an appropriate condition as well, but I don't
8 believe, Your Honor, that he's done anything to require house
9 arrest; but it would -- I mean you could do that as well. I've
10 asked for curfew.

11 Staying in the central district of California, he's
12 never had a passport in his life, so that's not an issue. And
13 removing weapons from the property, of course is something that
14 can be done as well.

15 I do believe, Your Honor, that this group has been
16 targeted. It is definitely viewpoint discrimination against
17 certain people.

18 I don't know why the FBI has decided to go after
19 Mr. Eason and a few others. I know that they were on the
20 property just a couple days ago with a search warrant, looking
21 for additional, whatever they could find to link him to hate
22 groups or whatever.

23 So they're still after him; they're still looking for
24 information. But that's not what he's being charged with; he's
25 being charged with being involved with a riot, inciting and

1 carrying on a riot.

2 Well, what did he do to that? There's no evidence he
3 did that.

4 **THE COURT:** All right, thank you very much,
5 Mr. McNicholas.

6 All right, any response from the Government?

7 **MR. FITZGERALD:** Yes, Your Honor. First, again,
8 because the indictment has been returned, and there are two
9 counts, the Defendant is looking at a 10-year possible
10 sentence. And the difference between 10 years and five years
11 is relevant to the risk of flight.

12 Going in reverse order to the points that were made
13 by Defense counsel; first, in regard to Mr. Eason's conduct,
14 the complaint and the indictment do charge Mr. Eason with being
15 a member of the RAM group.

16 And as set forth in the complaint and the contents of
17 the Pretrial Services report, there is ample evidence to
18 support that charge.

19 In particular, I would note on paragraph 55 of the
20 complaint, the Defendant sent a text message on September 25th,
21 2017, which was after the events in Charlottesville (phonetic),
22 saying, back in position to go hard with activism, but said he
23 had been sidetracked after Berkley.

24 So the idea that he had just an intermittent contact
25 with members of the group for this one event and then had

1 severed ties of last interest is not particularly accurate.

2 Furthermore, along with organizing and setting up the
3 transport to the Berkley event, he also was setting up and
4 inviting people to training, as set forth, for example, in
5 paragraph 33 of the complaint. And again, they had talked
6 about providing, quote/unquote, security for events.

7 And also, as set forth in the complaint, what the
8 Government is charging and what the evidence supports is that
9 these were not persons who were at a rally or assembly
10 exercising their First Amendment rights.

11 There were, of course, many people there who were
12 doing that. But also, they went there with the intent and the
13 understanding to engage in violent activities, or in fact to
14 riot.

15 And in fact, even as Defense counsel described it,
16 the event at Berkley was a riot. And what happened there, as
17 set forth in some of the materials, again listed in the
18 complaint, was in fact the members of RAM, including to a
19 degree, the Defendant did actively engage with persons that
20 they perceived to be ideological enemies, and assaulted them,
21 and otherwise engaged in the violent activities that are
22 covered by the statute.

23 So this is not a situation where people were
24 exercising their First Amendment rights, obviously which should
25 be protected, and then engaged in self-defense when confronted

1 with others, were people, A, who were proactively looking for
2 trouble, and B, were in often cases, the aggressors.

3 And while certainly, to the extent that members of
4 the assembly were attacked by other persons, that is
5 regrettable, and it may be at some point, those other persons
6 should also be charged or will be charged, that does not excuse
7 the activities of the group or of the Defendant.

8 Finally, in regard to the discussion of the
9 ideological interests, and statements, and general position of
10 white supremacy, that was expressed by the members of RAM, that
11 is not charging people for having a particular ideology per
12 say; but it is relevant to showing the nature of the group, the
13 aims of the group, and what the group wanted to accomplish,
14 namely in this case, for this charge, rioting, preparing for
15 riot, inciting a riot.

16 And I think the white supremacist views that are
17 suppressed and established throughout the complaint adequately
18 show the relevance of that to the charges that we are bringing.

19 And then, in regard to the flight risk, even under
20 the circumstances that are described by the Defense, we have a
21 Defendant who was aware that there was a arrest warrant out for
22 him.

23 I can certainly proffer that the FBI was very clear
24 in talking to the Defendant's father, that the Defendant needed
25 to turn himself in immediately. And they were certainly

1 willing to discuss how he could do that in the safest manner
2 possible.

3 Furthermore, even under the circumstances that we've
4 received from the Defense proffer, there are inconsistencies
5 with the father talking to the Defendant, talking about getting
6 an attorney, while what the FBI was being told was that the
7 Defendant was unavailable and was out somewhere in the desert.

8 So that goes both to the credibility of the father,
9 the credibility of the proffer, and then the credibility of the
10 father as a potential surety in the case.

11 In regard to the proffer regarding the advice of
12 counsel, I've discussed with counsel, and they've agreed,
13 because the advice of counsel has been proffered to this Court,
14 that there's been a limited waiver of the attorney/client
15 privilege.

16 I would prefer not to put a fellow attorney on the
17 stand if that's not necessary. But I would ask through the
18 Court if we could have a supplemental proffer, where the timing
19 and the circumstances of the discussions between counsel and
20 Defendant occurred; did they occur over the phone, did counsel
21 know where the Defendant was when those discussions took place.

22 **THE COURT:** Okay. All right, thank you, very much.

23 All right, Mr. McNicholas, why don't I first pick up
24 where Mr. Fitzgerald left off there with the request for the
25 supplemental proffer. I do agree that there has to be a

1 limited waiver of the attorney/client privilege if --

2 **MR. McNICHOLAS:** Yes. And --

3 **THE COURT:** -- Mr. Invictus is offering that.

4 **MR. McNICHOLAS:** -- Mr. Eason is waiving that
5 privilege.

6 **THE COURT:** Okay.

7 **MR. McNICHOLAS:** Yes.

8 **THE COURT:** All right. Have you had an opportunity
9 to talk to Mr. Eason about that?

10 **MR. McNICHOLAS:** Yes, I have, Your Honor.

11 **THE COURT:** Okay.

12 **MR. McNICHOLAS:** The communication, as I stated
13 during my opening statement, was that the communication was on
14 Friday, the, I believe it's October 26th, between Mr. Eason and
15 Mr. Invictus.

16 And the discussion was, you wait for me, we will turn
17 you in together. And appointment was made. Mr. Invictus
18 contacted the FBI.

19 He set up an appointment to meet them on Sunday
20 afternoon, October 28th. And it was done; and it happened.
21 They met at the federal building.

22 The building's closed on Sundays, but they met there.
23 And Mr. Eason voluntarily surrendered to the FBI. And by the
24 way, Your Honor, 30 years I've been doing this, criminal
25 defense work. And occasionally, I -- an individual contacts me

1 who has a warrant for his arrest, wanting to know what to do.

2 I do exactly what Mr. Invictus does; let's figure out
3 a way to turn yourself in, so they don't come marching to your
4 house busting your door down, scaring your family and your
5 children, and we'll do this peacefully, the right way, we'll
6 surrender directly to them.

7 It is the appropriate, and peaceful, and reasonable
8 method of surrender. Especially, in this case, you've got
9 press all over the place. Everybody's just dying to take blood
10 of these so-called white supremacists.

11 It wasn't a good situation at all. If anything,
12 there was legitimate concern for Mr. Eason's safety. So 100
13 percent reasonable what went on there.

14 I don't think the Court should hold that in any way
15 against Mr. Eason, because it lasted a couple of extra days,
16 because he's waiting for his attorney to come from Florida.

17 Another thing, I do not accept the proffer of the
18 Government, that Mr. Eason is a member of RAM. They need to
19 prove it; there's no proof of that, okay, there's none
20 anywhere. So they need to prove that.

21 Number two, Mr. Eason has never been to
22 Charlottesville. If they're going to bring up the word
23 Charlottesville, prove that as well. I don't accept any
24 proffer that has anything to do with Charlottesville. That's
25 irrelevant; it has nothing to do with this case.

1 **THE COURT:** All right, Mr. McNicholas, why don't I
2 share with you some of my concerns and ask you to respond to
3 them? So I'm looking at the affidavit. And so what I have
4 here is -- I look at the timeline.

5 **MR. McNICHOLAS:** Right.

6 **THE COURT:** And again, this is based -- focusing on
7 what Mr. Eason was alleged to have said, either through social
8 media, text messages.

9 So we have him identifying himself, and then
10 referencing the Huntington Beach rally, and then after that,
11 undertaking the, what I think can be fairly characterized as
12 organizational steps with respect to the upcoming Berkley
13 rally.

14 And so -- and this is in paragraph 32 -- I mean
15 paragraph 34, the reference to training and preparation for
16 Berkley. And then the description, paragraph 37, of what
17 transpired at Berkley, including these images of Mr. Eason --

18 **MR. McNICHOLAS:** Mr. --

19 **THE COURT:** I think that's, again, paragraph 37. And
20 then I have after that, I have, I believe the description of
21 the pursuit in paragraph 40, which identifies Mr. Eason as one
22 of those.

23 And then the reference to -- excuse me -- the
24 statements attributed to Mr. Eason about after Berkley, ready
25 to go hard with activism.

1 **MR. McNICHOLAS:** Right.

2 **THE COURT:** And so I don't construe what was --
3 what's in the affidavit as saying that Mr. Eason was at
4 Charlottesville, but rather just simply after what transpired
5 in Charlottesville, that there was a, perhaps a quiet period.

6 **MR. McNICHOLAS:** You know, as far --

7 **THE COURT:** But -- so I guess -- so -- but let me
8 just be clear on what my concern is. So we have the Huntington
9 Beach rally, right, with -- I think without their -- at least
10 publicly described about the activities of this group.

11 And then we have what happens at Berkley, and then
12 these images of individuals assaulting other protestors. And
13 then what I have in front of me -- and there's a finding of
14 probable cause by a magistrate judge with respect to that --
15 and now, I have the proffer of the indictment --

16 **MR. McNICHOLAS:** Okay.

17 **THE COURT:** -- of violence occurring. And then I
18 have description of Mr. Eason standing there. And again, I
19 think that was -- well, somebody else alleged to be in this
20 movement is assaulting someone, another protestor.

21 **MR. McNICHOLAS:** Right, right, Your Honor.

22 **THE COURT:** And then -- but then here's my concern
23 about the danger, Mr. McNicholas, is after all that. But
24 there's no, at least not from what I'm seeing, kind of like a
25 disavow of this. I'm not -- this isn't what I signed up for,

1 this is -- this has gone beyond the First Amendment viewpoint.

2 And instead, I then have the post-Berkley, I'm ready
3 to go hard with activism; and that's --

4 **MR. McNICHOLAS:** Your Honor --

5 **THE COURT:** -- paragraph 55.

6 **MR. McNICHOLAS:** -- and I would like to comment on
7 that.

8 **THE COURT:** Please.

9 **MR. McNICHOLAS:** Mr. Eason was literally going to be
10 involved in planting trees. That is what that text is speaking
11 to. It has nothing to do with the rallies; it has nothing to
12 do with violence; it has to do with legitimate concern for his
13 community and planting trees.

14 And Your Honor, I got a letter right there that you
15 have, Exhibit 1. Mr. Eason is around the community. He's
16 beautifying the community.

17 He's putting signs up. He's a landscaper. He
18 literally was talking about planting trees. And without more,
19 there is nothing else.

20 **THE COURT:** So --

21 **MR. McNICHOLAS:** I mean to infer that that means
22 anything that is a -- that is criminal, is beyond belief.

23 **THE COURT:** So in paragraph 55, where it says, I'm
24 back in the position to go hard with activism?

25 **MR. McNICHOLAS:** Yeah, hard with activism.

1 **THE COURT:** I got sidetracked after Berkley?

2 **MR. McNICHOLAS:** Yeah. And by the way, Your Honor,
3 when you say there was no disavow, he did get sidetracked after
4 Berkley. He was disheartened after Berkley, after seeing what
5 went on in Berkley, he did step back; he didn't want to be
6 involved in a violent atmosphere.

7 He did make an effort to lead -- and do you know
8 what, Your Honor; he did leave. He hasn't been there; he has
9 not been there.

10 April 15th, 2017, a year-and-a-half ago, one day,
11 where no photographs are of him, Your Honor -- by the way,
12 Mr. Eason disputes that he's in any photographs.

13 There's a claim that he's in a photograph with a
14 banner. I don't believe he is; okay? There's no photographs
15 of Mr. Eason engaged in any kind of confrontational conduct.

16 Again, it's about protecting speakers, about
17 protecting viewpoint. But the theme is assault; and it's just
18 not the case. And I mean that will be litigated later on.

19 But even assuming that's the case, a man who's had a
20 life of no crime, a life of no violence -- and I do disagree
21 that it's a consecutive term, because I believe they merge; I
22 believe the conspiracy merges with the 2101 allegation.

23 I do believe it's a five-year maximum. I mean maybe
24 the Government will continue to argue with me on that; but I do
25 believe they merge, and it is a five-year maximum; okay?

1 This is an individual that deserves a chance. His
2 family is here; they are willing sureties. Whatever the
3 Government -- whatever the Court asks from them, I'm sure they
4 will agree to do.

5 I am 100 percent sure that Mr. Eason will be a
6 remarkable individual on pretrial release. There will be no
7 concerns. There will be no issues about him going to rallies
8 or events if there were.

9 The internet's pretty big, he's now an infamous
10 individual, and people will know.

11 **THE COURT:** All right, thank -- anything else,
12 Mr. McNicholas?

13 **MR. McNICHOLAS:** No, Your Honor.

14 **THE COURT:** Okay.

15 Mr. Fitzgerald, with respect to the flight danger, I
16 -- as I already expressed to Mr. McNicholas, my concerns about
17 danger, when I look at the flight component or analysis, I see
18 an individual who did self-surrender, eventually not long after
19 being notified.

20 And then I see an individual with no criminal history
21 and who now has willing sureties. So while I have my concerns
22 about danger, I guess I -- from my position, I do see a
23 condition or combination of conditions with respect to flight.

24 And so I just want to give the Government an
25 opportunity if it wants to be heard on flight.

1 **MR. FITZGERALD:** Yes, Your Honor. First, I would
2 state that a person who -- aware of a search warrant and --
3 excuse me -- an arrest warrant and an order of the Court, and
4 is aware that the FBI is actively looking for him and is trying
5 to arrange to have him surrender as soon as possible, feels
6 that it is appropriate to delay, to discuss, determine what's
7 in his best interest, is someone who when he makes that
8 calculus in the future could well decide once again not to
9 appear in court.

10 Second, I'll just reiterate the sureties and the
11 circumstances, whereby he would let out are involved with his
12 family, the property. And I believe he have shown why there
13 are issues there, where at least one of the surety members, the
14 father, was not being candid with law enforcement regarding the
15 location of his son.

16 And I'll note, despite by request, we have not heard
17 from the Defendant's private counsel where the Defendant was
18 when these telephone calls took place. And it's certainly
19 possible he was actually at the house with his parents in a
20 safe place, where they simply could have called up the FBI and
21 said, please come and in a low-key nonconfrontational way,
22 please, I'll surrender, you can arrest me.

23 And certainly, I think nothing in the case or
24 anything in the record suggests that the FBI was looking to go
25 in, in a SWAT-sort of mode and was trying to make this as

1 dramatic and violent as possible; quite the opposite.

2 Furthermore, in regard to the number of sureties,
3 there was a suggestion in the Defense memorandum that there
4 would be \$100,000; but that would appear to be unsecured. And
5 I would suggest that any sort of surety that would guarantee
6 the Defendant being here would have to be a larger amount and
7 would have to be secured by real property.

8 **THE COURT:** Okay. All right, thank you very much.

9 Anything else, Mr. McNicholas?

10 **MR. McNICHOLAS:** No, Your Honor.

11 **THE COURT:** Okay.

12 All right, so Mr. Eason, we -- I've heard from the
13 attorneys. I've evaluated the information in the complaint and
14 the affidavit, as well as the information in the Pretrial
15 Services report.

16 And I've tried to let your attorney know where my
17 concerns are. And I still have the same concerns that I
18 mentioned to Mr. McNicholas.

19 And it concerns the danger here, the safety of the
20 community, and whether or not a condition or conditions can be
21 fashioned that will ensure the safety of the community.

22 So I know that your attorney disagrees with what I'm
23 about to say. I'll let you make a record, Mr. McNicholas,
24 after this. But I have in front of me the information
25 contained in the affidavit.

1 And I spent a lot of time looking at the timeline
2 that's set out in that affidavit, what's described about this
3 organization RAM. I took a look at the statements that are
4 attributed to you and what's described about your participation
5 and/or involvement at Berkley.

6 And what I take away from that is that you appear to
7 understand what the movement, this movement was doing or did in
8 appearing at (indisc.) appearing at these events, these
9 rallies, that you took steps to arrange, not only for
10 transportation, but some type of training.

11 I don't have any more information about that. Your
12 attorney will be able to make arguments about what that really
13 means, based on your understanding or your view.

14 But I have just this limited information; and then I
15 have the description about you and what you were doing while
16 you were at the Berkley rally.

17 And then I have a statement after that, when it
18 appears to me that you should know or should've known what the
19 movement was attempting to do, based on the violence that
20 occurred at Berkley, and then knowing all of that.

21 Again, as I had come back to a couple of times, I
22 have this paragraph showing that you are not -- it's not
23 withdrawing from the movement or the conspiracy that's been
24 charged, but instead, you are still participating. I'm
25 referring again to the paragraph 55.

1 I appreciate what Mr. McNicholas is saying and trying
2 to explain that. I don't -- I guess I -- within the four
3 corners of the affidavit, I just -- I don't see that as a
4 reasonable description that can somehow make that not of
5 concern to the Court.

6 So for that reason and for those reasons, Mr. Eason,
7 I'm going to order that you be detained and remanded to the
8 custody of the marshals while this case is pending.

9 All right, Mr. McNicholas, do you want to state
10 anything on the record?

11 **MR. McNICHOLAS:** I will say that the Court has the
12 premise wrong. It is clearly inaccurate that the group of
13 individuals that did go to Berkley went there to defend
14 speakers, to defend people who were exercising their First
15 Amendment rights. And when they were being attacked
16 physically, they defended them.

17 However, with that in mind, Mr. Eason never committed
18 a crime. And even -- the evidence that we've seen so far, so
19 minimum, so transparent, it does not go to the essence of
20 criminal activity.

21 Again, the Rise Above movement is a figment of the
22 Government's imagination, at least regarding Mr. Eason. I
23 could go on, and on, and on about this.

24 But when you say Mr. Eason never withdrew from the
25 conspiracy, he didn't do anything. After Berkley, I mean

1 besides one text, where he says, I'm going to get active again,
2 there's nothing.

3 So it really -- there is no justification for holding
4 him in custody pending trial. It's really too bad.

5 **THE COURT:** All right. Does the Government want to
6 put anything else on the record before we --

7 **MR. FITZGERALD:** Yes, Your Honor. I want to
8 emphasize, it's not as significant as the post-Charlottesville
9 text is; that is not the only evidence.

10 And in fact, in the complaint itself, shortly after
11 the Berkley melee, the Defendant sent a text message to
12 Mr. Masellis (phonetic) asking if Mr. Masellis' broken hand was
13 strong enough to attend another event at Berkley on April 27th,
14 2017, stating, I'm driving up to deny Antifa, a face-saving
15 (phonetic) victory.

16 And I respectfully submit that they were not talking
17 about planting trees in that exchange.

18 **THE COURT:** Okay. All right, thank you.

19 All right, so Mr. McNicholas, I think then what --
20 having now concluded the detention hearing portion, I think we
21 just need to set the date for post indictment arraignment, now
22 that the indictment has been returned.

23 **MR. McNICHOLAS:** That's fine, Your Honor.

24 **THE COURT:** And I propose November 9, which is a week
25 from today, at 11:00 a.m.

1 **MR. McNICHOLAS:** That's fine, Your Honor.

2 **THE COURT:** All right.

3 All right, Mr. Eason, you're going to be back here in
4 this courtroom a week from today Friday, November 9 at 11:00
5 a.m. for post indictment arraignment, which is when your
6 district judge will be assigned and the Court, whoever is
7 sitting here, will take the not guilty plea and then set dates.

8 All right, anything further, Mr. McNicholas?

9 **MR. McNICHOLAS:** No, Your Honor.

10 **THE COURT:** All right.

11 From the Government?

12 **MR. FITZGERALD:** No, Your Honor.

13 **THE COURT:** All right. Thank you. We're adjourned.

14 (Proceeding adjourned at 10:54 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in blue ink, appearing to read "Toni Hudson", is positioned above a horizontal line.

December 13, 2018

TONI HUDSON, TRANSCRIBER